

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Brian S. Shevlin, Keith P. Shevlin, and Erin R. Taylor, on behalf of themselves and those similarly situated,

Plaintiffs,

- against -

Phoenix Life Insurance Company and Phoenix Companies, Inc.,

Defendants.

FEDERAL COURT

DOCKET NO. _____

STATE COURT

DOCKET NO. MER L-002792 09

**NOTICE
OF REMOVAL**

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1332(d), 1441 and 1446, defendants Phoenix Life Insurance Company ("PLIC") and Phoenix Companies, Inc. ("Phoenix") hereby remove this action from the Superior Court of New Jersey, Mercer County, to the United States District Court for the District of New Jersey. In support of this notice, Phoenix states:

1. On or about October 30, 2009, Plaintiffs commenced this action by filing a complaint captioned *Brian S. Shevlin, Keith P. Shevlin, and Erin Taylor, on behalf of themselves and those similarly situated v. The Phoenix Life Insurance Company and Phoenix Companies, Inc.* in the Superior Court of New Jersey, Mercer County (the "Complaint"), Docket No. MER L-002792 09. A copy of the Complaint and attached exhibits are attached hereto as Exhibit A. Upon information and belief, no other pleadings or other proceedings have been filed or taken to date.

2. Phoenix Companies, Inc. was served with a partial copy of the Complaint on November 24, 2009 (several pages were missing). PLIC was notified that a partial copy of the Complaint

was served on the New Jersey Insurance Commissioner on November 24, 2009. This Notice of Removal is timely under 28 U.S.C. § 1446(b), as it is filed within thirty days after the receipt by defendant, through service or otherwise, of a copy of the initial pleading (albeit incomplete) setting forth the claim for relief upon which such action or proceeding is based. 28 U.S.C. § 1446(b).

This Court's Original Jurisdiction Pursuant to 28 U.S.C. § 1332(d)

3. This Court has original jurisdiction over this action under the Class Action Fairness Act of 2005, Pub. L. No. 109-2, 119 Stat. 4 (2005) ("CAFA"), codified at 28 U.S.C. § 1332(d)(2) because it is a civil action in which the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and is a class action in which any member of a class of plaintiffs is a citizen of a state different from any defendant.

4. Plaintiffs have alleged five causes of action against Defendants: (1) breach of contract; (2) breach of the covenant of good faith and fair dealing "implied in the life insurance contracts;" (3) negligence; (4) violation of the New York Consumer Protection Law; and (5) unjust enrichment. *See* Complaint Counts I – V. Counts I-III are against Phoenix Life Insurance Company alone. Counts IV-V are against Phoenix Life Insurance Company and Phoenix Companies, Inc. *Id.*

5. The amount in controversy in the Complaint exceeds \$5,000,000. The allegations in the Complaint include claims that Phoenix Life Insurance Company made prohibited reductions to the dividend scales of the "Closed Block" ¹ in each of the years from 2006 to 2009, and wrongfully used those deductions to increase the dividend paid to its parent corporation, Phoenix

¹ Plaintiffs define "Closed Block" as "the accounting mechanism to ensure that the reasonable dividend expectations of policyholders who own Policies that are part of the Closed Block Business are met." Compl. ¶ 22 (citing the Plan of Reorganization adopted by the Board of Directors of Phoenix Home Life Mutual Insurance Company on December 18, 2000).

8. At the time this action was commenced, PLIC and Phoenix were, and are, corporations established by and existing under the laws of the State of Delaware. The principal executive office of both entities is located in Hartford, Connecticut.

10. This is a “class action” because it is a civil action filed under a State statute or rule of judicial procedure, N.J. Rules of Court 4:32, authorizing an action to be brought by one or more representative persons as a class action. 28 U.S.C. § 1332(d)(1)(B).

11. PLIC and Phoenix are organized and exist under the laws of the State of Delaware, with their principal executive offices located in Hartford, Connecticut. Plaintiffs allege that they are residents of New Jersey.

12. Because Plaintiffs have brought this case as a purported class action, see 28 U.S.C. § 1332(d)(8), because diversity exists between the Defendants and at least one member of the class, and because the CAFA jurisdictional minimum is met, the state court action may be removed to this Court under the CAFA removal provisions. See 28 U.S.C. § 1453(b). No exception to removal under CAFA applies. 28 U.S.C. § 1453(d).

13. Defendants hereby appear solely for the purpose of removal and for no other purpose and reserve all defenses available to them.

Dated: December 14, 2009

Podvey, Meanor, Catenacci, Hildner, Coccoziello &
Chattman, A Professional Corporation
The Legal Center
One Riverfront Plaza, 8th Floor
Newark, New Jersey 07102

By: /s/ Sheldon M. Finkelstein
Sheldon M. Finkelstein

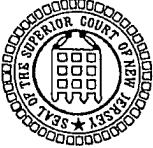

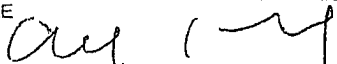
Debevoise & Plimpton, LLP
919 Third Avenue
New York, New York 10022

*Co-Counsel for Defendants Phoenix Life
Insurance Company and Phoenix
Companies, Inc.*

#274329

EXHIBIT A

Appendix XII-B1

CIVIL CASE INFORMATION STATEMENT (CIS)		FOR USE BY CLERK'S OFFICE ONLY	
 <p>Use for Initial Law Division Civil Part pleadings (not motions) under Rule 4:5-1. Pleading will be rejected for filing, under Rule 1:5-6(c), if information above the black bar is not completed or if attorney's signature is not affixed.</p>		<div style="font-size: 2em; opacity: 0.5; position: absolute; top: 0; right: 0;">COPY</div> PAYMENT BY CREDIT CARD <input type="checkbox"/>	
		CHG/CK NO. <input type="checkbox"/>	
		AMOUNT: NOV 0 4 2000	
		OVERPAYMENT:	
BATCH NUMBER:			
ATTORNEY/PRO SE NAME Arnold C. Lakind, Esq.	TELEPHONE NUMBER (609) 275-0400	COUNTY OF VENUE Mercer County	
FIRM NAME (if applicable) Szaferman, Lakind, Blumstein & Blader, P.C.		DOCKET NUMBER (when available) MER-L- 2792-09	
OFFICE ADDRESS 101 Grovers Mill Rd., Suite 200, Lawrenceville, New Jersey 08648		DOCUMENT TYPE Complaint	
		JURY DEMAND <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
NAME OF PARTY (e.g., John Doe, Plaintiff) Brian S. Shevlin, Keith P. Shevlin and Erin R. Taylor, on behalf of themselves and those similarly situated		CAPTION The Phoenix Life Insurance Company and Phoenix Companies, Inc.	
CASE TYPE NUMBER (See reverse side for listing) 514	IS THIS A PROFESSIONAL MALPRACTICE CASE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		
IF YOU HAVE CHECKED "YES," SEE N.J.S.A. 2A:53A-27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT.			
RELATED CASES PENDING? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IF YES, LIST DOCKET NUMBERS		
DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of same transaction or occurrence)? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY, IF KNOWN <input type="checkbox"/> NONE <input checked="" type="checkbox"/> UNKNOWN		
THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.			
CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION			
DO PARTIES HAVE A CURRENT, PAST OR RECURRENT RELATIONSHIP? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	IF YES, IS THAT RELATIONSHIP <input type="checkbox"/> EMPLOYER-EMPLOYEE <input type="checkbox"/> FRIEND/NEIGHBOR <input type="checkbox"/> OTHER (explain) _____ <input type="checkbox"/> FAMILIAL <input checked="" type="checkbox"/> BUSINESS		
DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO			
USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION:			
<div style="display: flex; justify-content: space-between;"> <div>  DO YOU OR YOUR CLIENT NEED ANY DISABILITY ACCOMMODATIONS? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO </div> <div>IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION:</div> </div>			
<div style="display: flex; justify-content: space-between;"> <div>WILL AN INTERPRETER BE NEEDED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO</div> <div>IF YES, FOR WHAT LANGUAGE:</div> </div>			
ATTORNEY SIGNATURE  Arnold C. Lakind, Esq.			

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Attorneys for Plaintiff(s)

Brian S. Shevlin, Keith P.
Shevlin, and Erin R. Taylor,
on behalf of themselves and
those similarly situated

Plaintiffs,

v.

The Phoenix Life Insurance
Company and Phoenix Companies,
Inc.

Defendants.

SUPERIOR COURT OF NEW JERSEY
Law Division - Mercer County

Docket No. MER 1-2792-09

COMPLAINT
(Class Action)

JURY DEMAND

Plaintiffs, Brian S. Shevlin, Keith P. Shevlin and Erin R. Taylor, on behalf of themselves and those similarly situated, by way of Complaint against the Defendants, The Phoenix Life Insurance Company ("PLIC") and Phoenix Companies, Inc., say that:

A. THE PARTIES

1. Plaintiff, Brian S. Shevlin, resides within the Borough of Pennington, County of Mercer, State of New Jersey and is the

owner of and an insured on a policy of life insurance of the Defendant, The Phoenix Life Insurance Company.

2. Plaintiff, Keith P. Shevlin, resides within the State of New Jersey and was the insured on a policy of life insurance of the Defendant, The Phoenix Life Insurance Company, during the relevant period.

3. Plaintiff, Erin R. Taylor, resides within the State of New Jersey and was the owner of and an insured on a policy of life insurance of the Defendant, The Phoenix Life Insurance Company, during the relevant period.

4. Defendant, The Phoenix Life Insurance Company, is currently engaged in the business of providing life insurance and other insurance products.

5. Phoenix Mutual Life Insurance Company ("PMLI"), was originally organized in Connecticut, in 1851, as a stock company under the name American Temperance Life Insurance Company.

6. In 1889, PMLI reorganized as a mutual life insurance company.

7. Home Life Insurance Company ("Home"), was founded in 1860, as a stock insurance company.

8. In or about 1916, Defendant, Home, repurchased its outstanding stock and became a mutual insurance company.

9. In or about 1992, PMLI and Home merged and called the new company Phoenix Home Life Mutual Insurance Company ("Phoenix Mutual"). In connection with that merger, the Company moved its domicile to New York.

10. In or about June 2001, Defendant, Phoenix Mutual, reorganized from a mutual life insurance company to a stock life insurance company, became a wholly owned subsidiary of The Phoenix Companies, Inc., and changed its name to The Phoenix Life Insurance Company.

11. PLIC is the successor company of Phoenix Mutual, Home and PMLI and all of the companies issued life insurance policies and are or were during the relevant period of time engaged in business in the State of New Jersey.

12. The Phoenix Companies, Inc., ("Parent"), is the parent corporation of The Phoenix Life Insurance Company.

13. The Phoenix Companies, Inc., is PLIC's sole shareholder.

14. The Phoenix Companies, Inc., is located at One American Row, Hartford, Connecticut 06102-5056.

B. THE INSURANCE POLICIES

15. In accordance with the terms of life insurance contracts between PLIC and Plaintiffs, as well as those similarly situated, the policyholder is the owner of his/her respective

17. PLIC credits dividends to policies in effect in the amount it apportions at the end of every year, in accordance with those policies.

C. THE DEMUTUALIZATION OF PHOENIX HOME LIFE
MUTUAL INSURANCE COMPANY

20. The proposed Plan of Reorganization anticipated that Phoenix Mutual would create a new holding company, The Phoenix Companies, Inc., which would own all of the common stock of Phoenix Mutual. Phoenix Mutual would be concurrently converted to a stock company and renamed Phoenix Life Insurance Company.

4

23. The Plan of Reorganization provided, under Article 3.1,
that

24. The Plan of Reorganization also provided, under Article 3.1, that "all Participating Policies will continue to be Participating Policies in accordance with their terms[.]"

5

[t]he objective of the Closed Block is to provide reasonable assurances to owners of policies therein that, after the Plan Effective Date, assets will be available to maintain the dividend scales in effect for 2000 if the experience underlying such scales continues and to implement appropriate adjustments in future dividend scales if such experience changes.

a. The investment activities of the Closed Block would be conducted in accordance with the investment guidelines filed with and approved by the New York Superintendent as required by the Closed Block Investment Guidelines. Exhibit A, p.32.

c. Dividends would be set in such a manner as to be fair and equitable to all classes of policyholders within the Closed Block as required by the Closed Block Dividend Policy.

Exhibit A, p.32.

d. Dividends would be set in such a manner as to have no assets left in the Closed Block when the final payment is made to the last policyholder as required by the Closed Block Dividend Policy. Exhibit A, p.33.

e. The Closed Block would be managed so that a majority of the fixed income portfolio was investment grade, based on ratings of Moody's Investment Services or comparable

ratings as required by Article 8.2 of the Plan of Reorganization of Phoenix Home Life Mutual Insurance Company. Exhibit A, p.63.

f. The Closed Block assets would be "managed in the aggregate to seek a high level of return consistent with the preservation of principal and equity" and as required by Article 8.2 of the Plan of Reorganization of Phoenix Home Life Mutual Insurance Company. Exhibit A, p.63.

g. The Closed Block Assets would "be managed in good faith and with that degree of care that an ordinarily prudent individual or entity in a like position would use under similar circumstances" as required by Article 8.2 of the Plan of Reorganization of Phoenix Home Life Mutual Insurance Company. Exhibit A, p.64.

h. The Closed Block dividends would be apportioned in accordance with applicable law as required by Article 8.2 of the Plan of Reorganization of Phoenix Home Life Mutual Insurance Company. Exhibit A, p.65.

i. The Closed Block dividend payments would be determined in a manner consistent with the contribution principle for dividend determination and consistent with ASOP-15, "Dividend Determination for Participating Individual Life Insurance Policies and Annuity Contracts" as set forth on page A-12 of the

k. "None of the assets, including the revenue therefrom, allocated to the Closed Block or acquired by the Closed Block [were to] revert to the benefit of the stockholders of [PLIC]." Exhibit A, p.65.

31. Defendants, PLIC and Phoenix Companies, Inc., sought to gain the affirmative vote of the policyholders and Plaintiffs for the Defendants' reorganization by making the foregoing representations prior to their vote on the demutualization of Phoenix Mutual.

9

34. On or about June 1, 2001, the State of New York Insurance Department approved the Plan of Reorganization and issued its "Opinion and Decision In the Matter of the Plan of Reorganization of Phoenix Home Life Mutual Insurance Company from a Mutual Life Insurance Company into a Stock Life Insurance Company" (hereafter "Opinion and Decision"), attached as Exhibit C.

36. Section L of the Major Features of the Plan of Reorganization is entitled "The Closed Block" and contains six sections: General, Establishment of the Closed Block, Operation of the Closed Block, Policy Benefits and Dividends, Other Participating Policies, and Actuarial Opinions. See Exhibit C.

10

39. The New York Insurance Superintendent further stated in the June 2001 Opinion and Decision that, "[a]ssets of the Company totaling approximately \$7 billion will be allocated to the Closed Block" and brought forward to the Plan of Reorganization Effective Date. See Exhibit C, p.52.

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Insurance on the Life of Brian S. Shevlin

43. Brian S. Shevlin is the owner of this policy, and as the owner, he is entitled to "exercise ownership rights which include the right to...receive dividends apportioned to this policy[.]"

45. Policyholders, including Brian S. Shevlin, had the right to elect under the Home Life Insurance Policy to apply the dividends under one of four options.

12

47. In 1991, when purchasing the Home Life Insurance Policy for his son Brian S. Shevlin, Kenneth B. Shevlin, was given a document entitled "Illustration of Policy Values" for a multi-year period.

49. The net premium payment equals a) the annual premium, b) less the dividend if it reduces the premium, c) less the increase in loan, d) plus the loan interest, and e) less the value of any dividend additions surrendered.

51. Between 1993 and 2006, the average annual policy dividend paid on Plaintiff Brian S. Shevlin's policy, and used to purchase paid-up whole life insurance, was approximately \$40.

53. In or about June 2008, PLIC informed Plaintiff, Brian S. Shevlin, that his 2008 annual policy dividend would be \$2.87.

Insurance on the Life of Keith P. Shevlin

57. Keith P. Shevlin was the owner of this policy during its relevant duration, and as the owner, he was entitled to "exercise ownership rights which include the right to . . . receive dividends apportioned to this policy[.]"

14

59. Policyholders, including Keith P. Shevlin, had the right to elect under the Home Life Insurance Policy to apply the dividends under one of four options.

60. Kenneth B. Shevlin elected to use the dividends to buy paid-up additions for his son, Keith P. Shevlin, which paid up additions the Home Life Insurance Policy defined as "[t]o purchase a participating paid-up level whole life addition."

61. In 1991, when purchasing the Home Life Insurance Policy for Keith P. Shevlin, Kenneth B. Shevlin was given a document entitled "Illustration of Policy Values" for a multi-year period.

62. The Home Life Insurance Policy "Illustration of Policy Values," issued in 1991, shows increasing annual dividends, to a point that net premium payments are shown as reduced to zero, beginning in year 15 of the policy, and afterward.

63. In 1998, Phoenix Home Life Mutual Insurance Company informed Kenneth B. Shevlin that dividends are expected to pay future premiums in year 21 (2012) of the policy on Keith P. Shevlin.

64. On or about October 23, 2000, PLIC provided Kenneth B. Shevlin, with a report which estimated that the policy dividend to be paid on the policy insuring Keith P. Shevlin and used to purchase paid up additional insurance. The report estimated that, based on the current interest sensitive dividend scale, dividends

17

72. Policyholders have the right to elect under the Home Life Insurance Policy to apply the dividend under one of four options.

74. In 1991, when Kenneth B. Shevlin purchased the Home Life Insurance Policy for his daughter Erin R. Taylor, he was given a document entitled "Illustration of Policy Values" for a multi-year period.

75. The Home Life Insurance Company 1991 "Illustration of Policy Values," issued in 1991, shows increasing annual dividends, culminating at a point that net premium payments are

76. In 2003, PLIC sent Kenneth B. Shevlin a report showing net premium payment on the policy of Erin R. Taylor to be zero in year 2015.

78. Between 1993 and 2006, the average policy dividend paid on Plaintiff Erin R. Taylor's policy, and used to purchase paid-up whole life insurance, was approximately \$40.

80. In or about July 2007, PLIC informed Plaintiff, Erin R. Taylor, that her 2007 policy dividend would be \$1.64.

82. In or about July 2009, PLIC informed Plaintiff, Erin R. Taylor, that her 2009 policy dividend would be \$0.

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policy dividend to be paid to Plaintiff, Erin R. Taylor, for each of the years 2007 to 2011 will be \$2.00 per year.

E. ADJUSTMENT OF DIVIDEND SCALE IN YEARS 2006 AND 2009

84. Section 4207(a) of the New York Insurance Law provides that "any domestic stock life insurance company may distribute a dividend to its shareholders where the aggregate amount of such dividends in any calendar year does not exceed the lesser of:

- (A) ten percent of its surplus to policyholders as of the immediately preceding calendar year; or
- (B) its net gain from operations for the immediately preceding calendar year, not including realized capital gains.

86. In 2003, 2004 and 2005, PLIC distributed stockholder dividends based on its net gains from operations for the immediately preceding calendar year. See Exhibit F(1 to 3).

87. The net gains from operations excluding realized capital gains for the years 2003, 2004 and 2005, were less than ten percent of the surplus to policyholders during the same years. See Exhibit F(1 to 3).

88. On November 3, 2005, The Phoenix Companies, Inc., issued a press release announcing that The PLIC Board of

90. The 2005 press release further stated that "Phoenix's closed block has benefitted from favorable mortality experience and strong persistency, which has offset the impact of a prolonged low interest rate environment." See Exhibit E(1).

92. In 2003, 2004 and 2005, PLIC policyholders received, in the aggregate, dividends of \$396.0, \$395.9 and \$398.1 million, respectively. See Exhibit F(1 to 3) at p.5, line 8.

95. As a result, the yearly dividend PLIC paid to Closed Block policyholders from 2006 to 2008, inclusive, was on average, \$55 million less than the yearly dividend Closed Block policyholders received in 2003, 2004 and 2005. See Exhibit F.

97. PLIC's 2005 Annual Statement, among others, to the National Association of Insurance Commissioners acknowledged that "[a]ny cash flows in excess of amounts assumed will be available for distribution over time to closed block policyholders and will not be available to stockholders." Exhibit G(2), p. 19.12.

On November 3, 2005, the 2006 policyholder dividend scale was reduced for most policyholders with a reduction in the interest component of the scale, partially offset by improvements in the mortality component. The decrease in dividend liability

was \$58.4 million. This decrease resulted in a increase of the same amount in the Statutory Gain From Operations before Taxes for 2005. This is the first such decrease since 1999.

[See Exhibit F(3), p. 19.13].

102. The maximum aggregate dividend PLIC could lawfully distribute to its shareholders is the lesser of a) ten percent of its policyholder surplus for the preceding year, or b) its net gain from operations for the preceding year, not including realized capital gains.

103. In 2003, 2004 and 2005, PLIC paid stockholder dividends in an amount equal to the net gain from operations for the preceding year not including realized capital gains. PLIC's net gain from operations for the preceding year not including realized capital gains was less than ten percent of the policyholder surplus for that same year. See Exhibit F(1 to 2).

104. In 2006, 2007 and 2008, PLIC paid stockholder dividends in an amount equal to ten percent of policyholder surplus for the preceding year. This amount was less than net gain from operations for the preceding year (including realized capital gains). See Exhibit F(3 to 5).

105. PLIC's 2005 surplus was \$875.5 million; ten percent of that figure is \$87.5 million. See Exhibit F(3), p.3, line 37 and p.4, line 52.

108. In adjusting the 2006 dividend scale, and thereby decreasing the dividends PLIC paid to Closed Block policyholders by \$58.4 million, PLIC was able to increase the dividend to its sole stockholder, Phoenix Companies, Inc.

110. In 2007 and 2008, PLIC maintained the 2006 dividend scale and continued to pay Closed Block policyholders reduced dividends. See Exhibit E(2 and 3).

112. In 2007, PLIC paid Phoenix Companies, Inc., a stockholder dividend of \$92.2 million. See Exhibit F(4), p.4, line 52.

115. The press release provided the following comment from Dona D. Young, chairman, president and chief executive officer of The Phoenix Companies, Inc:

116. In 2009, Brian Shevlin and Erin Taylor received \$0 in dividends.

118. PLIC recognized this additional \$33.0 million as part of its "Statutory Gain from Operations before Taxes" for 2008. See Exhibit G(5).

26

[See Exhibit G(5)].

121. PLIC represented that Closed Block policyholders' dividends were reduced to "ensure an adequate level of assets in the closed block as well as fair and equitable dividend payments among all classes of participating policyholders. However, the total decrease in Closed Block dividend liability was recognized in the same amount, as a Statutory Gain from Operations by PLIC and comprised a substantial part of the "net gain from operations[] not including realized capital gains."

122. These gains flowed to the benefit of PLIC's sole shareholder, its parent company, The Phoenix Companies, Inc., from 2006 forward.

125. None of the gain was retained by the Closed Block or reinvested in the form of Closed Block assets, paid as policyholder dividends, nor used in any other way to benefit Closed Block policyholders.

126. Defendant, The Phoenix Companies, Inc., and its shareholders, benefitted from PLIC's wrongful reduction of dividends payable to and owned by Closed Block policyholders under their life insurance contracts.

127. Plaintiffs, Brian S. Shevlin, Keith P. Shevlin, and Erin R. Taylor, bring this action on behalf of themselves and as representatives of a class (the "Class") of PLIC policyholders.

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130. The proposed Class is so numerous that individual joinder of all of its members is impracticable. The total number of Class members is at least 100,000. The Class members are dispersed throughout the United States.

a. Did PLIC pay policyholder dividends in accordance with the terms of the policies of insurance comprising the Closed Block?

c. If so, was that contract breached?

e. Were policyholder dividends properly computed?

h. Were dividends set in such a manner as to be fair and equitable to all classes of policyholders within the Closed Block?

j. Were the Closed Block assets managed in the aggregate to seek a high level of return consistent with the preservation of principal and equity?

1. Was Defendant, PLIC, negligent in the management of investment assets in the Closed Block?

n. Were the dividend payments determined in a manner that is consistent with the contribution principle for dividend

p. Were Closed Block policyholder dividends reduced for the benefit of stockholders of Phoenix's parent corporation, The Phoenix Companies, Inc.?

r. Have Defendants violated the New York Consumer Protection Law?

133. The representative parties will fairly and adequately protect the interests of the Class.

30

140. Even if individual Class members had the resources to pursue individual litigation, it would be unduly burdensome to the courts in which the individual litigation would proceed.

143. The conduct of this action as a class action conserves the resources of the parties and of the judicial system, and protects the rights of the class members. Furthermore, for many, if not most, class members, a class action is the only feasible mechanism that allows them an opportunity for legal redress and justice.

CLAIM FOR BREACH OF CONTRACT AGAINST PHOENIX
LIFE INSURANCE COMPANY

2. Defendant, PLIC, failed to pay dividends on policies of life insurance owned by Plaintiffs and those similarly situated, in accordance with the terms of their policies.

32

WHEREFORE, Plaintiffs and those similarly situated, demand judgment against Defendant, PLIC, for:

- Plaintiffs, and those similarly situated, demand judgment against Defendant, PLIC:

- b) Compelling PLIC to allocate dividends in a fair and equitable manner and in conformance with the requirements set

CLAIM FOR BREACH OF THE COVENANT OF GOOD
FAITH AND FAIR DEALING IMPLIED IN THE LIFE
INSURANCE CONTRACTS AGAINST PHOENIX LIFE
INSURANCE COMPANY

2. Pursuant to the contracts for life insurance, Defendant, PLIC, owed a duty to Plaintiffs and other similarly situated policyholders to deal fairly and in good faith when setting, apportioning and paying policyholder dividends.

4. The "prolonged low interest rate environment" cited by Defendant, Phoenix Companies, Inc., as the "change in experience" warranting the 2006 and 2009 dividend scale adjustments does not support the amount by which PLIC reduced policyholder dividends.

34

1. *What is the purpose of this study?*

2. *What are the research objectives?*

3. *What is the research design?*

4. *What are the variables?*

5. *What is the sample size?*

6. *What are the data sources?*

7. *What are the data collection methods?*

8. *What are the data analysis methods?*

9. *What are the results?*

10. *What are the conclusions?*

11. *What are the limitations?*

12. *What are the implications?*

13. *What are the future research directions?*

14. *What are the references?*

15. *What are the appendices?*

16. *What are the acknowledgments?*

17. *What are the funding sources?*

18. *What are the ethical considerations?*

19. *What are the data availability statements?*

20. *What are the contact information?*

[illegible][illegible]

1. *What is the purpose of this study?*

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- a. Compensatory damages;
- b. Interest;
- c. Attorneys' fees and costs of suit; and
- d. Such other and further relief as the Court deems equitable, just or proper.

Plaintiffs, and those similarly situated, demand judgment against Defendant, PLIC:

- a) Prohibiting PLIC from reducing dividends that would otherwise be declared for Closed Block policyholders so as to benefit the stockholders of PLIC, its Parent company, The Phoenix Companies, Inc., or any other firm or class of stockholder; and

- b) Compelling PLIC to allocate dividends in a fair and equitable manner and in conformance with the requirements set forth in the Information Booklets.

COUNT III

CLAIM FOR NEGLIGENCE AGAINST PHOENIX LIFE
INSURANCE COMPANY

1. Plaintiffs incorporate, as if fully repeated herein, all of the preceding paragraphs of this Complaint.
2. Defendant, PLIC, failed to exercise due care in its management and investment of assets in the Closed Block.

5. As a result of the failure of PLIC to exercise due care, Plaintiff and those similarly situated were injured.

- a. Compensatory damages;
- b. Interest;
- c. Attorneys' fees and costs of suit; and
- d. Such other and further relief as the Court deems equitable, just or proper.

CLAIM FOR VIOLATION OF THE NEW YORK CONSUMER
PROTECTION LAW AGAINST PHOENIX LIFE INSURANCE
COMPANY AND THE PHOENIX COMPANIES, INC.

2. Defendants, PLIC and Phoenix Companies, Inc., engaged in deceptive and misleading commercial acts and practices

b. diversion of Closed Block revenue from policyholders to themselves and their stockholders; and

3. The Defendants' acts and practices were materially deceptive and misleading to the reasonable consumer.

5. As a result of the Defendants' materially misleading and deceptive consumer-oriented acts and practices, the Plaintiffs, and those similarly situated, suffered economic loss in the form of reduced policyholder dividends.

a. Compensatory damages and punitive damages;

38

6. Phoenix Companies, Inc., was enriched at the expense of Plaintiffs and those similarly situated, whom were denied policyholder dividends from revenues on assets within and/or supporting the Closed Block, of which they were the rightful owners.

WHEREFORE, Plaintiffs and those similarly situated, demand judgment against Defendants, PLIC and The Phoenix Companies, Inc., for:

- 40

41